

# Is Peacemaking Unpatriotic?: The Function of Homophobia in the Discursive World

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## I. SPEECH AS AGGRESSION

Ours is the only species that will kill for an idea. I wrote that sentence before knowing that American diplomats would die, in Libya on September 11, 2012, at the hand of someone who thought killing was required to defend their idea against ours.<sup>2</sup> So, first, I pause to honor our ambassador and representatives who lost their lives on a mission of peace and diplomacy. How very blessed we are that some will take this risk on our behalf.

In American jurisprudence it is sometimes said that there is no such thing as a false idea,<sup>3</sup> but ideological neutrality is a luxury we do not have in an armed world. The person who would kill me because I am an American is motivated by a false belief. The notion that I cannot speak of their motivations in a language of peace is also a false belief.

Some of the thinkers I admire most, from John Dewey<sup>4</sup> to Renato Rosaldo,<sup>5</sup> would hesitate at the toxic certainty<sup>6</sup> in that voice. So, I will retreat and say simply this—we must find a better ideology, a place closer to truth, without falling into the killing space of “one way, my way, not yours.”

“No such thing as a false idea” is an easy position. The harder position is one that Alexander Meiklejohn sought—an ordering of ideas, putting greater value on the ones needed for the democratic conversation, the ones that get us closer to truth.<sup>7</sup> Insulting someone’s religion with the intent of inflaming hatred is not high value speech.<sup>8</sup> It neither seeks truth nor invites counterargument. It aims past argument in the same way a fist to the face does. It is far from the core of the democratic conversation that we seek to protect through our First Amendment.

I have argued for limits on assaultive speech because of my concern for the basic rights of targets: the right to live, to go to school, to raise a family, to move about freely, to participate in self-governance, to speak, to thrive.<sup>9</sup> The core of human rights, the core of personhood and substantive Due Process, is absent in a reign of terror under which certain groups are targeted for hatred and annihilation. Simply put, genocide is the opposite of what is protected by the Constitution and the Bill of Rights. Therefore, I have argued, the ideological underpinnings of genocide—the hate propa-

ganda that necessarily precedes it—are properly restrained under our legal system. Less dramatically, equality is foundational in a democratic system that relies on participation by all. Hate propaganda that diminishes the ability of some to participate equally in this project carries constitutional cost deserving of weight against costs to speech neutrality. This argument puts me in a decided minority under American jurisprudence, though not under international law. The justifications for American First Amendment exceptionalism are non-trivial, and I have tried to give them serious response elsewhere, primarily in my book with Charles Lawrence, Richard Delgado, and Kimberlé Crenshaw.<sup>10</sup>

This essay takes a different turn by exploring rhetorical bullying in the form of what we can and cannot say, and the origins of rhetorical bullying in the structures of subordination. If speech is as valuable as the First Amendment posits, then the conditions under which speech lives and dies are worth considering. I began writing about hate speech as a lawyer because of the effects of hate speech on the Civil Rights Movement. When people spoke up for freedom, they were predictably attacked by hate groups that used words and violence in a seamless package. “Outlaw the Klan” was a movement demand, and I wanted to figure out why this demand was so reflexively deemed unconstitutional.

I learned through talking about hate speech that the discussion of speech itself takes place in a discursive world in which certain things are considered unutterable. The discipline mechanisms that enforced this convention were decidedly male. “*You can’t say that and call yourself a lawyer,*” “*I am appalled that you are allowed to teach,*” “*You are a fascist,*” I was told in territorial, disdainful, bullying, vein-popping-out-of-the-neck tones that harked back to the primitive world of the schoolyard, or the unmediated, culturally male space of certain deposition rooms that I witnessed as a young lawyer. At one debate, a discussant grandiosely refused to shake my extended hand.

These responses are completely counter to the tone I attempt to project. I was taught, and I believe, that good scholarship considers counter-arguments and acknowledges weaknesses. I am not convinced that, in my First Amendment analysis, I have the lines drawn exactly where they should be, and have said this explicitly.<sup>11</sup> Errors in speech doctrine are costly, so movement to restrict speech should err on the side of speech protection.<sup>12</sup> At the same time, we are sitting on a powder keg that could blow. There are error costs on both sides, thus the need to engage deeply, as I have with respected colleagues in the civil liberties community.<sup>13</sup>

Self-doubt is not the custom in public debate. In adversarial speech performance, the voice of certainty carries weight. Probing, intersubjective, self-reflective conversation is odd. Yet if speech is a cornerstone of democ-

racy, if developing better ways to live on this planet without destroying it is a prerequisite to our survival, we need to bring all the necessary ideas to the table. The First Amendment can save your life; the wrong idea can kill you. This is why I am concerned about the mechanisms by which speech is suppressed in daily life, and am searching to understand the ways in which Hate Studies tells us something about conversation ending.

## II. THINGS WE CANNOT SAY

Listen for peace talk, and you will find its absence in public conversation. By peace talk, I refer to a rhetoric that in substance extols and promotes peace, and in style seeks peace as a process of mutual discovery, infused with spirituality, love of humankind, and wonder, as well as standard claims of fact and proof. Peace talk leaves room for self-doubt and self-criticism. It resists binaries of us-and-them, seeks common humanity, suggests ways in which we are all complicit with violence, and proclaims our mutual responsibility to end violence. It is a kind of talk largely absent when politicians hold press conferences, when professors teach in large lecture halls, when learned experts expound on news shows or public radio. Peace talk is marginalized: “peaceniks” is a dismissive term, accompanied by stereotypes of muddle-headed, aging hippies. Academics who break the rules and openly engage in peace talk are called biased, as though violence and its absence are equally plausible choices, each deserving equal consideration in a discussion of the good life. Choosing peace is not “objective,” and since good scholarship is objective, peace advocates are not good scholars. Choosing peace ignores hard realities, is dreamy, soft, or worse, is itself an act of war: If you are arguing for peace, you must want our enemies to win.

My claim that peace talk is subject to discipline is one that comes from personal experience, from all the pejoratives—from naïve to dangerous and worse—predictably received when ideas of peacemaking are raised. As Catharine MacKinnon once said to men who were skeptical of women’s reported experience of patriarchy, “Try speaking up for women on a regular basis and see how you are treated.” Similarly, try speaking up for peace on a regular basis and see how you are dismissed.

Here are five things that one cannot say in public conversation without encountering predictable forms of rhetorical discipline and shunning:

1. People who seek refuge in Islamic extremism are our fellow human beings. Before we dismiss them all, we should ask what conditions pushed them to a place from which they see harming Americans as just.

2. We, who live in the metropol of three meals a day, exhaust-spewing belt-ways, mysterious financial instruments that can take down a country without the consent of its people, with overflowing closets stuffed with goods we don't need created in overseas factories where workers die in sweatshop fires, benefit from a system that causes others to resent us.

3. We should create an international army for peace, calling on all world citizens to reach out to others whose religion, culture, or beliefs are different from their own, and denouncing arms traffickers as the enemies of freedom. Or, as one self-described Green Zionist asked me at a multi-racial break fast<sup>14</sup>: "Why is there no Peace Department?"

4. We should teach peace in our schools, along with the languages, cultures, histories, and religions of the wide world so that we encounter our neighbors with less ignorance.

5. I am deeply sorry that someone from my country chose to say cruel, false, horrible things about your faith. I am ashamed that this came from my country and reached yours. I regret that it insulted you.

There are several reasons why we do not say or hear these things in the public sphere. First, they might strike you as polemical and therefore not useful, or counterfactual, or misleading. But what if you agree with at least some of the content? Why can't one say these things in public discourse, in a Presidential debate, in a classroom, at an academic conference, in the marketplace of ideas, without drawing ridicule and opprobrium?

Peace talk comes up against the hard fist of discipline. If you say these things, someone will proclaim that you grovel to our enemies, justify their transgression against us, and walk on the graves of good Americans who gave their lives for freedom. You are a naïve simpleton who does not understand how dangerous the world is; *you* are dangerous.

I recently taught a class on religious traditions and peace, covering readings from the Buddhist, Hindu, Islamic, Old and New Testament, and Daoist traditions, among others. The conversation was wide-ranging and personal. I wept while reading "blessed are the mourners, for they shall be comforted," as I told my students about a family I knew with three children who had just lost their father. A student who does not believe in God told of crying at the sight of a rainbow, which, as a physicist, he understood as a scientific phenomenon of light and molecules. Prompted by the rainbow story, a student with a military background said he "lost it" when, in high school, he first learned about black holes. We talked about the spiritual, the things beyond reason, in a law school classroom, as part of a reading designed to consider the role of religion in both promoting peace and generating sectarian violence. The discussion was personal, wide-ranging, emotional, open-ended, with no voice of authority or right answer. We tried to see something about the human condition and the path to peace. Every

person in the class spoke and when we left, we were not sure what we had learned.

“This conversation,” I said, “would seem strange to people outside this class,” and students could make a list of the pejoratives others would use. From “that’s not law,” to “new age BS.” Our law school discussions rest on an assumption of secular modernity, yet, as one student who had been to seminary pointed out, billions of people see some version of seeking transcendence as central to their life. That is not going to change. Another student said, “It Is.”

In the world as “It Is,” people take their spirituality seriously. They yearn for meaning. They want to join something bigger than themselves. Why not, then, offer them a worldwide peace movement? Margaret Mead argued on strong anthropological evidence that war is a human invention, not universal across either geography or time.<sup>15</sup> We could, she said, come up with a better invention. To talk about it, however, is regarded as naïve dreaming, neither rigorous nor lawyerly. As though letting the world drift, awash in weaponry, through endless war, is somehow the smarter, more realistic, more adult response. Rejecting agency over history becomes hard; calling for a plan to ameliorate hate and protect our planet is soft. An inversion, as Critical Race Theory tells me, is a power move. *Question it.*

When a horrible incident of terrorism, prompted by sectarian hatred, falls upon us, it is too late for ordinary people to ask the questions we should have asked years before: *Who hates us, and why? What conditions created that hate? Who are our allies in ending that hate?* I honor our entire diplomatic core whose job it is to ask those questions always. Unfortunately, they explore those questions behind closed doors. Parts of that work are necessarily classified, but I suspect much of it is not discussed publicly because critics will seize upon efforts to explain the causes of resentment as “un-American.”

Actual stories—of a parent mourning a child killed by one of our military accidents, or of a teenager working in a sweatshop run by one of our corporations—are not told in a way that humanizes the vast “over there.” And so, we are shocked when things erupt and the news blasts crazed faces “over there,” marching in the streets and shouting anti-American slogans. By then, any efforts to explain, understand, or complexify our world are misheard as justification: *Are you with them, or are you with us?*

I began teaching Peace Studies for law students about a decade ago at the Georgetown Law Center, in the wake of September 11, 2001. A tiny group of frightened students asked me to lead a discussion on peace. *We are under pressure to put American flags up in our dorm windows, they said. Any suggestion that compulsory nationalism is not our preferred*

*response is not allowed. So far, we haven't found any professor willing to lead a peace discussion for us.*

As time passes, I will have to explain to current students what "not allowed" meant in that period. Those students were evacuated from their school. They had to stand in line to call home on banks of phones the law school had set up when communication throughout the city shut down. I had shared with them a day of sick fear in which rumors overran Washington and all the things we counted on, from accurate news to public transportation, were suddenly gone. In the midst of fear and char and funerals, it is hard to say, "I want to talk about peacemaking."

As a teacher, I felt called to open a space where teachers and students could talk about it. I helped organize discussion groups for law professors, published peace essays in hastily organized symposia,<sup>16</sup> and prepared a course proposal and syllabus. Through those experiences, this is what I learned: In times of crisis, the voice of war is certain; the voice for peace is not. While we have the stunning counterexample of Patsy Mink and members of the Congressional Black Caucus speaking forcefully against war in the Capitol, their voices were hardly heard. They were drowned out by the fighter jets and bombers that launched immediately, to cries of "Thank God" coming from a stunned citizenry. The war machine went into action on swift wings of certitude, while on the ground the peace discussions were agonized and small.

"I can't say where I stand if I don't understand the complete situation. I don't even read Arabic," one professor said.

"George Bush doesn't read Arabic," I said, "We are law professors. We train our students to ask good questions. What are five good questions we should ask before an invasion?"

"I believe an invasion is wrong and will make things worse, but what if I'm wrong? What if we go into Iraq and we really are able to make things better for the people there," a thoughtful participant in the group, DC Asians for Peace and Justice, offered quietly.

"The White House offers no evidence that good outcomes will happen. We question whether we are wrong, but the war-makers never question. That is why we have to speak for peace," I said.

"I just have to believe they know something I don't know that justifies what they are doing," a neighbor said.

"But we were lied to so many times before. Why should we trust them now?" I asked.

Meanwhile, unbeknownst to me, a future student of mine was deferring law school and volunteering for service in the U.S. Army. His country was attacked and he felt duty-bound to defend it; I so admire this student.

Years later, as a returning combat veteran, he ended up in my peacemaking class. I welcomed him and asked why he chose the class. “I thought I knew everything I needed to know, and now I don’t know what I know, and I’m just here to try to figure it out,” he said with a quiet humility that stilled the room.

Why is it so hard to say “I don’t know; I am figuring it out?” Does it take a Purple Heart to earn that right? I know I often mention my father’s Purple Heart when advocating peace, as though his sacrifice somehow gives me permission to challenge the certainty of warrior culture.

Watch the deployment of agnosticism versus certainty in the following argument forms:

1. The First Amendment absolutist refuses to rank order ideas. There are no false ideas.
2. The America First rhetorician admits no space for self-criticism. America, right or wrong.

As a Critical Race Theorist and peace activist, I have encountered both of these forms repeatedly, and see a commonality in the refusal, within these rhetorical moves, to do the hard work of evaluating complex historical circumstances and multiple causation. In the first rhetorical move, we have no means for evaluating truth claims and will only invite tyranny if we try to unpack the relative value and harm of assaultive speech. In the second one, we are the good guys; our choices are therefore unassailable. When we make choices that put us further at risk for global instability—choices that allow growing wealth inequality, for example—our choices are off the discussion list in unpacking the threat. In a reconfiguration of cause, critique of our choices becomes the problem.

In Critical Race Theory, we challenge both positions, wrenching open a space to speak tentatively about the conditions of our lives in a challenge to dominant stances on the knowable and the known. The method is consciousness-raising; the end is saving our own lives. The core of the First Amendment that welcomes all ideas, that rejects premature certainty, is critical: all ideas should have their hearing. This does not mean all ideas are equally valid; we should take stands on truth and value, and do the hard work that is required to have confidence in our positions. Hard work means that all ideas should have their hearing, particularly those we tend to shut down because of a need to deny our complicity with injustice.

The retrieval of voice was an early and persistent theme in feminist theory<sup>17</sup> and Critical Race Theory,<sup>18</sup> and it applies as well to the voice of peacemaking. The humility of the peace voice is largely absent from the

current political landscape. This is the sound of silence I was taught to listen for in anti-subordination theory—the silence that locates injustice.

Peace conversations subject ideas to scrutiny, revealing hard choices and opening new spaces:

*Pay more for gas, talk to your enemy; what might those suggestions do for you? No, I'm not sure I am right. You might be right. I respect you. I listen to you because the world is wide and no one knows everything we need to know about it, because over a thousand cups of tea,<sup>19</sup> we may find that all that makes us enemies is smaller than our need to survive, together, on this planet, this mere raft we float on as we journey to what may or may not be the ultimate destination.*

If you speak this language in law school, you are called “not serious.”

### III. PROFESSORS WILDMAN AND GRILLO POSE A QUESTION

Worldwide anger over an insulting anti-Muslim film erupts, an American ambassador is killed, the uprisings of the Arab Spring continue.<sup>20</sup> Demands for answers and calls for action predictably follow. These demands eclipse complex backstories, deep historical contexts, and significant missing facts, as calls for immediate answers and moral absolutes predominate.

Before we even mourned the deaths, a rhetorical dance began. Had our *State Department* wrongly apologized for *Islamophobic propaganda*? *When? Did the President speak too softly? Who failed to defend Americans? Who will pay?*<sup>21</sup>

What creates this conversation form, in which everything is black and white, softness is a curse, and complexity or tentative conclusions are not allowed? My answer might surprise you, but it is of direct concern to Hate Studies: *It is called homophobia.*

Professor Stephanie Wildman<sup>22</sup> emailed recently to say, “I seem to remember Trina saying you think homophobia is the central form of subordination. Did you really say that? Can I cite it?” I emailed back, “I’ve said something like that,” and sent a few cites. “No, that’s not it,” she replied.<sup>23</sup> Finally I picked up the phone and we talked it through in the “what if this is true? I think maybe it is, but also consider. . .” conversation form that feminists and Critical Race Theorists have always used to see clearly through smoke and mirrors. In just such a discussion, that an insistent justice seeker like the late Trina Grillo<sup>24</sup> would push, I must have backed into a tentative claim, no doubt influenced by the work of Suzanne Pharr,<sup>25</sup> about the primacy of homophobia in shaping structures of subordination. In honor of the “noodginess” for justice that is the Grillo-Wildman team,<sup>26</sup>



here I elaborate on that claim, knowing – as we always have – that the right answer is a work in progress.

*Dear Wildman and Grillo,*

*You are right to push this question. In all our study of subordination we are careful to avoid false equivalencies, false hierarchies. Opposing hierarchy would be a central tenet in what brought us together in the first place, except that there is no central tenet in anti-hierarchical analysis. It is useful, however, to posit the existence of a primary fulcrum for injustice in our culture; I believe the closet, and its mechanisms of enforcement, is it.*

What is the form of discipline that keeps us silent? The field of Hate Studies identifies structural, rhetorical, symbolic, neurological, and emotional elements to the kind of hate that turns to violence. What does it take to overcome the natural inhibition against hurting another human being? The papers discussed at the special symposium<sup>27</sup> to mark the tenth anniversary of the *Journal of Hate Studies* speak of semiotics, of disgust, of in-group solidarity, fear, and survival impulses. As I read all of this, I thought of the role of homophobia, the semiotic motherlode, the paradigm binary, the place we learn about hate, disgust, fear, inside, outside, retribution. I say this as a Critical Race Theorist who has worked all my life against racism, as a feminist woman who is conscious of the target on my back put there by patriarchy; as a union supporter who walks picket lines for workers' rights. Next to all of that, why does the closet still seem so big?

As Critical Race Theorists, we have looked long and deep at racism, its history, its permutations, functions, and ideology. When I put racism next to the closet, I see relationships: emotive and psychodynamic aspects of hate and disgust, the need for clarity of boundaries and binaries as enforced with law and violence, the valorizing of bullying behavior and stigmatizing of kindness and empathy, the driver of fear, of outcast status, the need for a group up against the liberal ideal of the individual. And at the end, I see the vulnerable body and the material consequences of stigmatized status.

In the world I grew up in, no one was out and gay—no professional athlete, no rock star, no politician, no one on television, no classmate, no teacher, no friend or workmate of my parents, no one in my neighborhood, no relative, no political comrade in the many struggles for peace, labor, and civil rights in which my family marched. Everywhere I went, the closet was there and invisible except to the people who were locked in it. Enforced conformity on this level existed for no other form of subordination in my lifetime.

As soon as I learned that there was a social system to negotiate outside of my family, I also learned that boys who were not strong were sissies, and that this dangerous charge could bring a small fist to a sickening blow that bloodied a small nose. Children saw this, and they learned. Somewhere along the way, in whispered secrets, a child was told that gay people existed, was told this with the kind of “not us” signaling that scholars of Hate Studies describe in their work as the means of transmitting hate of the worst kind: the hate that kills.

The need for clear boundaries and sharp binaries to separate normal from transgressive was nowhere more evident than in these whispers and the schoolyard bullying of the weak. Weakness was hated, and jumped on. Your own parents told you to stand up to the bully, because backing down made you a permanent target.

Alice Miller says that at home children learn not to empathize with themselves and therefore learn not to empathize with others.<sup>28</sup> I think she is right, but I also saw in my childhood that showing empathy was risky, and that many good-hearted, guilty children stood by and watched as the sissy was targeted, maybe even cheering on against their true heart’s contrition, lest they become the next target.

Growing up next to the closet, boys could not show kindness. The rare ones who could amassed social capital to resist in some way. The captain of the football team, or the funniest and most loyal charmer you ever met, might get away with gestures of empathy toward the weak. “Leave him alone,” a 12-year-old said in a field near my house. This simple intervention became legendary, because it shut down an incident when an awkward child was about to get mobbed. The children and their parents repeated this story precisely because it was so remarkable. What gives one child the power to stand up to a mob and deflate its tumbling rush to cruelty? That 12-year-old was known to his classmates as brave, humble, consistently generous, and fair to all. He was popular in a calmly confident way and he was the last one on the schoolyard anyone would call a sissy. He could do it.<sup>29</sup>

What of the children who are on the fringe of that crowd, the silent witnesses, or the marginally willing participants who choose again to go along with the mob? What citizenship are they preparing for in their schoolyard? Quiet watchers are often present when group hate manifests. We rarely teach them strategies of resistance.

Where does the lynch mob come from, the Jim Crow sign, the new school segregation? Where does rape come from, power-over as sex, taking and hurting because she is “just a girl?” Why do we see buying and selling of women as a victimless crime, sweatshops as inevitable, homelessness as chronic, children killed by our robot planes as collateral costs of justified

self-defense? How do we stop seeing pain to another body as pain to our own? Human empathy makes it quite hard to watch pain to another. Even my dog does not like to watch pain, so how do we learn to stop feeling?

If you grow up next to the closet, watching “unmanly” boys backed into corners, while the master rule of “don’t tell” governs the schoolyard, you know you are on your own in this world. Get yours, find a group, don’t signal weakness, and don’t ally with the weak.

Early in my work on both hate speech and Critical Race Theory, I thought what was missing in liberal legal analysis was a deep understanding of individual identity as inextricable from group identity. People need their groups, love their groups, form a sense of self in their groups. Group identity of the solidaristic, joyful type—a tribe dancing their style, a cook seasoning food the way “we do it here,”—seems useful, human, and not only harmless but generative of warm intersubjectivity. *Come have some of this. No one makes it as well as we do here.*

I do not think our human habit of affinity is itself the problem. No. *Mean* is the problem. *Fear* is the driver. *The closet* is the mechanism. Group identity combined with power imbalances, political hegemony, subordination, forced conformity and violence, is the *social* degraded into its opposite.

Many of us are distinctly vulnerable through our group identities, or rather how others engage those identities. Libel of one’s group is therefore a libel against the individual, and, given the right historical circumstances, a threat of real and imminent harm to the individual. Lies about your race or religion, lies that could cause others to kill you, are an intrusion on your personhood, even if no one used your individual name or address. We teach our daughters rape avoidance, and as a woman, I learned early on that I was targeted as a woman. I learned someone who did not know or care a thing about my individual identity could target me for harm because of my gender. My group identity and source of pride and joy—my life as a woman—made me an object of hate.

In my youth, I witnessed the complete triumph of the closet and all the brutality that went along with it. Then began the great migration out of the closet that is beginning to show us how, overnight, we can let go of an ancient fear and just see love where we should have seen it all along. The next generation will see gay people in every single place where they were once invisible: in school, at work, at church/synagogue/mosque/temple, on television, in professional sports, in politics, in the neighborhood, raising families, or not, as they choose. It is possible that the next generation will grow up without the discipline the closet generated.

Does it make sense to call someone a sissy if every place on the con-

tinuum of girl to boy is happily inhabited by someone you know, maybe even someone you love? If you cannot call someone a sissy when that person engages in acts of kindness or silly exuberance, where will mean go? What will happen to the political accusation of “soft”?

In addition to the closet, the great looming presence of my lifetime, now also deflated, was Cold War paranoia. “Soft” was leveled at peace-makers who were soft on the enemy, soft on communism, soft on crime. No President, including the man I admire who currently occupies the White House, is allowed to seem conciliatory to those nations who are seen as our enemy. No apology when they are offended, no nod to what we admire in their culture, no inviting them for tea under vine and fig tree, even though there is no other way.<sup>30</sup>

Before he became President, this wise man said we have to talk to our enemies, we have to reduce nuclear arsenals, we cannot bomb our way to world peace; negotiation and diplomacy are not the same as surrender.<sup>31</sup> When he became President, this language receded, lest political opponents pounce. Peace talk gives aid and comfort to the enemy, they were waiting to say, it makes us seem weak.

The closet is falling and the cold war is over. Maybe we can say it now: *We, the vast majority of human beings who seek neither war nor hate, who want only to wake up tomorrow morning, go to work, love our families, tend our garden, would like the minority of bellicose bullies to stop making human history a river of blood.*<sup>32</sup> *Sabre-rattling is not brave. It doesn't cause the other side to cower in submission. It will make them hate us. They will forge sabers out of plowshares while their own children go hungry.*

#### IV. IT'S COLD OUTSIDE

A final way I see the closet as the major enforcer of subordination of all kinds is through the inscription of the public-private split. Out of the closet is public, where we conduct business, law, war, work, and politics. Inside the closet, in private, is where we love and make love, bond, and grieve. The gay judge, rock star, quarterback, general, senator, or boss wields conventional male power, and gets to do this under the old rules, so long as he does not tell us he desires men. Desire is trivial, not important. A deal of silence is cut and love is the loser.

All of us who lived during the reign of the closet, whether straight or gay, learned to leave the soft, messy parts of ourselves at home: *Come to work with a broken heart, and function like a trooper, because in the real world of work and politics, your subjectivity must not disrupt. Hide that box of Kleenex in the bottom drawer.* This is where I have kept mine all

these years, there for the students who inevitably, every semester, come to my office carrying some unbearable pain—a parent in the hospital, a sibling addicted to drugs, or simply the heavy rock of their own lost zest for living—that they ordinarily mask. Pain is embarrassing, in this view. People apologize for it.

Is it no wonder that peace talk is outsider talk, that so few act like global warming is the emergency that it is? Peace talk breaks the rule that keeps feeling in check, love in the closet, vulnerability masked, and our own mortality an unspoken secret. We neither bleed nor mourn in the hard-edged public world the closet helped make. We put on our suits and go to work, leaving our hearts behind.

I do not see a way to take down the war machine or disable the genocide trigger if we do not talk about hate's antipode. Let go of the false hardness of so-called analytical thought that is ignorant of the actual conditions of human lives. The closet is over and anyone who calls you soft because you seek peace is lonely and afraid.

Ours is the only species that will kill for an idea. That grim observation has a promising corollary: Ours is the only species that can invent a new idea that will change our behavior. Neither slime mold nor the great apes get to do that.

In the days after September 11, 2001, the *Rafu Shimpo* newspaper sought out old Kamikaze pilots.<sup>33</sup> How odd that these content California retirees were once suicide bombers. The war ended, allowing them the chance to reflect on their past, war-making selves. "People in our homeland were being killed in carpet bombings. . . . It came so natural to us that we were going to sacrifice our lives to protect our beautiful country and my people," Haruki Okamoto said.<sup>34</sup> He was 15 years old, and had been told that occupying Americans would come to rape the women and castrate the men. He says he felt no fear of dying.<sup>35</sup> "It is impossible for the U.S. military to eradicate every single one of the enemy. I am very worried that hatred against us among survivors and their sympathizers would multiply, which would lead to the next retribution against us," he said of our military response to the September 11, 2001 terrorist attacks.<sup>36</sup>

Another Kamikaze survivor recalled that if one teen-age trainee made an error, all members of the unit were beaten until they bled.<sup>37</sup> They were trained as a team, and every single one stepped up when volunteers were called for a suicide mission. The war's end saved him from the death he volunteered for, and he went on to serve in the U.S. Army in the Korean War.<sup>38</sup> As the bombing missions over Afghanistan began, this veteran of two wars asked simply "retribution will call for another act of retribution . . . . Why wasn't there any talk with them before this happened?"<sup>39</sup>

They were young, taken from their families, chosen for a special team. They loved the team; they ate and sang and cried and trained to die together. They did not know any Americans, and they believed it when they were told the Americans would rape their sisters and mothers and grandmothers if they invaded. They had to stop them, and they were ready to die to do it.

The war ended, and the young pilots had the chance to consider a new idea. It happens! People change and grow and let go of the hate that they once consumed like food, breathed like air, knew with certainty.

### CONCLUSION

From the halls of the Academy to the halls of Congress, toxic certainty ends conversations. I declare no certainty about the primary role of homophobia in generating other forms of oppression, but I do claim that homophobia plays a large role in the dominance of dominance: be hard, express no doubt, demolish the threat. I am also sure, by now, that priapic bully-talk will never save us from the jaws of the killing machine.

We may have little time before the seas rise to swallow us, before the next planned act of terror, or before random lawlessness of the enraged dispossessed hits a town where someone we love just happens to be. Instead of compulsory nationalism, premature certainty, homophobic bullying of peaceful dreamers, we can invent a new idea, or take seriously an old idea passed to us through holy hands of all human faiths: the mystery, the power, the dream, of our humble place in a larger and most beautiful cosmos.

### NOTES

1. Professor, William S. Richardson School of Law, The University of Hawai'i at Mānoa. The author thanks Tiffany Dare, Daylin-Rose Gibson, and Sarah Miller for research assistance, and John Shuford, David Steib, Robert Tsai, Stephanie Wildman, and Marc Spindelman for comments.

2. On September 11, 2012, Islamic militants attacked the United States diplomatic mission in Benghazi, Libya, killing American ambassador, J. Christopher Stevens, and three other Americans. Early reports linked the attack to protests over a "14-minute, American-made video that depicted the Prophet Muhammad, Islam's founder, as a villainous, homosexual and child-molesting buffoon." David D. Kirkpatrick, *Libya Attack Brings Challenges for US*, N.Y. TIMES (Sept. 12, 2012), <http://www.nytimes.com/2012/09/13/world/middleeast/us-envoy-to-libya-is-reported-killed>

.html?pagewanted=E@80%A^&\_r=0/. More recent reports claim that the attack was not an isolated incident, but a premeditated terrorist attack. See Mark Landler, *Benghazi Debate Focuses on Interpretation of Early E-mail on Attackers*, N.Y. TIMES (May 9, 2013), [http://www.nytimes.com/2013/05/10/us/politics/benghazi-debate-focuses-on-interpretation-of-early-e-mail-on-attackers.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/05/10/us/politics/benghazi-debate-focuses-on-interpretation-of-early-e-mail-on-attackers.html?pagewanted=all&_r=0).

3. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974).

4. See generally JOHN DEWEY, *THE QUEST FOR CERTAINTY* (1928).

5. See generally RENATO ROSALDO, *CULTURE AND TRUTH: THE REMAKING OF SOCIAL ANALYSIS* (1993).

6. The phrase “toxic certainty” is borrowed from the New York choreographer, Bill T. Jones, whose dances reflect the opposite. Jones aimed to create a work of choreography that “endorses the values of the Enlightenment,” and that would “cast a critical eye on what he described as a national atmosphere of ‘toxic certainty.’” The New York Times described Jones’s piece, “Blind Date,” as a “series of segments that question the expediency of war, reflect on limited opportunities for the urban poor and remark on the centrality of sexual moralism to the Republican agenda.” Ginia Bellafante, *Political Footwork from Bill T. Jones*, N.Y. TIMES (Sept. 21, 2005), <http://www.nytimes.com/2005/09/19/arts/19iht-billjones.html?pagewanted=all>.

7. It is dismaying that Meiklejohn is so frequently cited by scholars who seem not to have read his work. Meiklejohn is quoted regularly in articles criticizing my position on hate speech, to stand for the proposition that all speech of every kind should be protected, as though Meiklejohn believed that the speech commons is a trash heap unto which everyone may unload as much trash as they please. In fact, his theory is deeply humanistic and function-based: the first amendment has a function, the promotion of compassionate, informed citizens. See Alexander Meiklejohn, *The First Amendment is an Absolute*, 1961 SUP. CT. REV. 245, 255 (1961) (“Self-government can exist only insofar as the voters acquire the intelligence, integrity, sensitivity, and generous devotion to the general welfare that, in theory, casting a ballot is assumed to express.”); ALEXANDER MEIKLEJOHN, *FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT* 26 (1948) (“It is that mutilation of the thinking process of the community against which the First Amendment to the Constitution is directed. The principle of the freedom of speech springs from the necessities of the program of self-government.”).

8. “Low value speech” was differentiated from “high value speech” in *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942) (“There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any

Constitutional problem. These include . . . ‘fighting’ words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.”).

9. See generally, MARI J. MATSUDA ET AL., *WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT* (1993); Mari J. Matsuda, *I and Thou and We and the Way to Peace*, 6 *ISSUES IN LEGAL SCHOLARSHIP* 1 (2002); Mari J. Matsuda, *The Keynote Address: Progressive Civil Liberties*, 3 *TEMP. POL. & CIV. RTS. L. REV.* 9 (1994); Barry Brown, Jamie Cameron, David Goldberger & Mari Matsuda, *Language as Violence v. Freedom of Expression: Canadian and American Perspectives of Group Defamation*, 37 *BUFF. L. REV.* 337 (1989).

10. MATSUDA, *WORDS THAT WOUND*, *supra* note 9.

11. Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim’s Story*, in *WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT* 17 (1993).

12. *Id.*

13. Nadine Strossen, former President of the ACLU, for example, is a colleague whom I have shared the debating platform with on many occasions. See, e.g., Mari J. Matsuda, *The Dialogue: Mari Matsuda’s Remarks*, in *REMARKS AT THE ARLIN M. ADAMS CENTER FOR LAW AND SOCIETY AT SUSQUEHANNA UNIVERSITY* (Mar. 13, 2003), available at <http://www.susqu.edu/documents/academics/hate.pdf> (“I admire the work of Professor Strossen and her ACLU colleagues, particularly at a historical moment when fear is driving an abandonment of fundamental constitutional ideas such as habeas corpus and due process. It is for me a season of longing for the absolutist’s allegiance to constitutional principle. No exceptions, ever, to the rights given in our foundational documents be it code orange, code red, or when bombs fall. As the Star Spangled Banner stood in the rocket’s red glare, may our Bill of Rights stand in the season of fear. I am thus glad for the company of absolutists at this time even as my commitment to democracy suggests a different cut on the question of hate speech and equality.”).

14. On the eve of delivery of the lecture from which this paper derives, the author attended the Lerner-Sneiderman annual breakfast in Shepherd Park, D.C., an event that brings together social justice workers of many ages, races, jobs, and religions in observance of a Jewish religious tradition. Among the many idealistic young people in attendance was a gentleman whose simple question I quote here.

15. Margaret Mead, *Warfare is Only an Invention—Not a Biological Necessity*, in *APPROACHES TO PEACE: A READER IN PEACE* 20 (David Barash, ed., 2010). I acknowledge Dr. Barash’s reader as a text that drew



me into the field of Peace Studies, and that led me to sources cited in notes 15 and 33.

16. See, e.g., Mari Matsuda, *Among the Mourners Who Mourn, Why Should I Among Them Be?*, 28 *SIGNS* 475 (2002); Mari Matsuda, *Asian Americans and the Peace Imperative*, 27/28 *AMERASIA* 141 (2001).

17. A classic feminist anthology introducing this theme is *FEMINIST THEORY* viii (Nannerl O. Keohane et. al. eds., 1982). "Whether distrustful or optimistic, the dialogue with the traditions in which feminist scholars were trained inevitably raises the question, How far can we use these theories, these languages? Are they irrecoverably centered in male experience, so that we must somehow begin from the beginning and devise our own languages, our own discourse? Yet what would it mean to do such a thing? [ . . . ] Instead, like Susan Griffin, we begin with an internal monologue that is a dialogue, sometimes a discordant choir, of voices from different parts of past experience and training, reworking them in painful and painstaking self-scrutiny to fashion them into the matter for a new voice, a woman's voice."

18. See *supra* note 9.

19. The late ambassador J. Christopher Stevens was an admired and respected diplomat, known for seeing the necessity of building relationships in the Middle East over many cups of tea. Steven Erlanger, *A U.S. Envoy Who Plunged Into Arab Life*, N.Y. TIMES (Sept.15, 2012), [http://www.nytimes.com/2012/09/16/world/middleeast/us-ambassador-to-libya-knew-the-ways-of-the-arab-street.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/09/16/world/middleeast/us-ambassador-to-libya-knew-the-ways-of-the-arab-street.html?pagewanted=all&_r=0).

20. See *supra* text accompanying note 2.

21. Following the attacks on the diplomatic mission in Benghazi, Libya, then presidential candidate, Mitt Romney, released a statement saying, "It's disgraceful that the Obama Administration's first response was not to condemn attacks on our diplomatic missions, but to sympathize with those who waged the attacks." Mr. Romney's statement was in response to a statement released by the American Embassy in Cairo right before the attack in an attempt to cool tensions. The American Embassy condemned the American-made video and stated that the Embassy rejects "efforts by misguided individuals to hurt the religious feelings of Muslims." Mr. Romney stated that the Obama Administration's handling of the developments in the Mideast was "akin to an apology." Peter Baker, *Obama Condemns Attack That Kills Ambassador to Libya*, N.Y. TIMES (Sept. 12, 2012), <http://thecaucus.blogs.nytimes.com/2012/09/12/obama-condemns-attack-that-kills-ambassador-to-libya/?gwh=E81F46349489035C913AA5A32D7101C9>. During a January 2013 Congressional Hearing, former U.S. Secretary of the State, Hillary Rodham Clinton, publicly defended her actions during the Libya attack. At one point she stated that

there was too much focus on the early characterizations of the Benghazi attacks and not enough focus on how to prevent this type of attack from occurring again. Michael R. Gordon, *Facing Congress, Clinton Defends Her Actions Before and After Libya Attack*, N.Y. TIMES (Jan. 23, 2013), [http://www.nytimes.com/2013/01/24/us/testifying-on-benghazi-clinton-cites-new-security-steps.html?\\_r=0](http://www.nytimes.com/2013/01/24/us/testifying-on-benghazi-clinton-cites-new-security-steps.html?_r=0).

22. Stephanie Wildman, professor and director of Center for Social Justice and Public Service at Santa Clara Law, is a leading theoretician of privilege. See, e.g., STEPHANIE M. WILDMAN, *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCES UNDERMINES AMERICA* (1996).

23. Email exchanges between the author and Stephanie Wildman occurred in December 2012 (on file with the author).

24. The late Trina Grillo was a professor at University of San Francisco School of Law, known as a master teacher, committed social justice advocate, and a founding mother of Critical Race Theory. See *Trina Grillo 1948-1996*, SANTA CLARA UNIVERSITY SCHOOL OF LAW, available at <http://law.scu.edu/socialjustice/file/Trina%20Grillo%20Bio.pdf> (last visited June 4, 2013). She did not “back down from what she saw, either personally or politically.” Mari J. Matsuda, *Were You There? Witnessing Welfare Retreat*, 31 U.S.F. L. REV. 779, 779 (1997). She was able to “stop a conversation in its tracks by looking a friend in the eye and asking a pointed question.” *Id.* As an academic, Trina’s “work spanned areas from alternative dispute resolution to academic support, from teaching methods to the status of women in legal education.” Stephanie M. Wildman, *Dreaming in America: In Honor of Professor Trina Grillo*, 31 U.S.F. L. REV. 733, 734 (1997). She “held her hand out to students who didn’t come from wealthy families, who didn’t have parents who went to college, who didn’t speak English as their first language, who weren’t supposed to become lawyers. Her hand reaching out changed the course of their lives, as well as her own.” Mari J. Matsuda, *Were You There? Witnessing Welfare Retreat*, 31 U.S.F. L. REV. 779, 788 (1997).

25. See SUZANNE PHARR, *HOMOPHOBIA, WEAPON OF SEXISM* (1997).

26. For examples of the work of this team, see Stephanie Wildman & Trina Grillo, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other-isms)*, 1991 DUKE L.J. 397 (1991); Stephanie Wildman & Trina Grillo, *Sexism, Racism and the Analogy Problem in Feminist Thought*, in *RACISM IN THE LIVES OF WOMEN: TESTIMONY, THEORY AND GUIDES TO ANTIRACIST PRACTICE* (Jeanne Adleman & Gloria Enguidanos eds., 1995).

27. See Daniel Kato, *Constitutionalizing Anarchy: Liberalism, Lynching, and the Law*, 10 J. HATE STUD. 143 (2012); Robert Lanning, *Irrationalism: The Foundation of Hate Propaganda*, 10 J. HATE STUD. 49 (2012); Willa

Michener, *The Individual Psychology of Group Hate*, 10 J. HATE STUD. 15 (2012); Marla Stone, *Italian Fascism's Soviet Enemy and the Propaganda of Hate, 1941-1943*, 10 J. HATE STUD. 73 (2012).

28. See generally ALICE MILLER, *BANISHED KNOWLEDGE: FACING CHILDHOOD INJURIES* (1997).

29. See Robert Faris & Diane Felmless, *Status Struggles: Network Centrality and Gender Segregation in Same-and Cross-Gender Aggression*, 76 AM. SOC. REV. 48 (2011) (noting that kindness may be a luxury “enjoyed from a secure position at the pinnacle of the [social] hierarchy or by individuals who have no hope (or desire) to reach such heights.”).

30. These words were written during President Barack Obama’s first term, when, in this author’s view, the pressures upon the new President to exhibit traditionally male leadership censored his ability to use a language of peace. The second inaugural suggests an opening for a return to this language. Compare President Barack Obama, Inaugural Address (Jan. 20, 2009) (transcript available at <http://www.whitehouse.gov/blog/inaugural-address/>) (“We will not apologize for our way of life, nor will we waver in its defense. And for those who seek to advance their aims by inducing terror and slaughtering innocents, we say to you now that our spirit is stronger and cannot be broken — you cannot outlast us, and we will defeat you.”), and President Barack Obama, Inaugural Address (Jan. 21, 2013) (transcript available at <http://www.whitehouse.gov/the-press-office/2013/01/21/inaugural-address-president-barack-obama>) (“We will show the courage to try and resolve our differences with other nations peacefully — not because we are naïve about the dangers we face, but because engagement can more durably lift suspicion and fear.”).

31. Before Obama became President, he stated “Here’s what I’ll say as President: ‘America seeks a world in which there are no nuclear weapons . . . The best way to keep America safe is not to threaten terrorists with nuclear weapons it’s to keep nuclear weapons and nuclear materials away from terrorists.’” Christopher Wills, *Obama says new approach needed to rid world of nuclear weapons, touts early Iraq opposition*, L.A. TIMES, Oct. 3, 2007, available at <http://www.latimes.com/news/politics/la-ex-obama3oct03,0,3013555.story>. In the January 2008 Democratic Presidential debate, Barack Obama stated, “What I do believe is that we have to describe a new foreign policy that says, for example, I will meet not just with our friends, but with our enemies, because I remember what John F. Kennedy said, that we should never negotiate out of fear, but we should never fear to negotiate.” *Part 3 of CNN Democratic presidential debate*, CNN POLITICS (Jan. 21, 2008, 10:32 PM), <http://www.cnn.com/2008/POLITICS/01/21/debate.transcript3/index.html>. He stressed that “engaging in tough diplomacy is not a sign of weakness; it’s a sign of strength.” Lynn

Sweet, *Obama defends anti-surge stand in CBS' Katie Couric Obama interview in Amman. New biggest weakness; short on human genome info, The scoop from Washington*, CHI. SUN TIMES (July 22, 2008, 5:58 PM), <http://blogs.suntimes.com/sweet/2008/07/cbs-katie-couric.html>.

32. This Will Durant quote has haunted my students and me:

History books describe the history of the world as a river red with blood. Running fast, it is filled with the men and events that cause bloodshed: kings, and princes, diplomats and politicians. They cause revolutions and wars, violations of territory and rights. But the real history of the world takes place on the riverbanks where ordinary people dwell. They are loving one another, bearing children, and providing homes, all the while trying to remain untouched by the swiftly flowing river.

*Quoted in* KERMIT JOHNSON, *REALISM AND HOPE IN A NUCLEAR AGE* (1988).

33. Shigehito Onimura, *Kamikaze Veterans Warn of Real Danger in Retribution*, RAFU SHIMPO (L.A.), Sept. 28, 2001, at 1.

34. *Id.* at 3.

35. *Id.* at 1.

36. *Id.* at 3.

37. *Id.*

38. *Id.*

39. *Id.*